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Children's Law Report

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Children: The Forgotten Victims of Domestic Violence

by Janet Chiancone

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INTRODUCTION

Over two million women are victims of domestic violence (ranging from threats of violence to slaps to hitting to severe beating, rape and even murder) in the United States every year. Each year, over three million children witness physical and verbal abuse between their parents.² The abuse ranges from screaming and insults to hitting and even homicide.

Does living in a violent home make a child more vulnerable to becoming a victim of abuse? Can abused parents adequately protect their children? What are the short and long-term effects of the child witnessing this violence? As a lawyer, what should you know about the impact of domestic violence on children?

THE LINK BETWEEN BEING A WITNESS AND A VICTIM

Children in families where there is domestic violence are at great risk of becoming victims of abuse themselves. Studies indicate this group is 15 times more likely to

experience child abuse than children in nonviolent homes.³ Over half of children in families where their mother is battered are also abused.⁴ In some cases, children may try to intervene and protect their mothers, getting caught in the middle of the violence. In most cases, however, children are also targets of the violence.⁵

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³Stacey, W. & Shupe, A. (1983). *The Family Secret*. Boston: Beacon Press.

⁴Mckibben, L., DeVos, E. & Newberger, E. (1989). Victimization of mothers of abused children: A controlled study. *Pediatrics*, Vol. 84, pp. 531-535; Rosenbaum, A. & O'Leary, D. (1981). Children: The unintended victims of marital violence. *American Journal of Orthopsychiatry*, Vol. 51, No. 4, pp. 692-99; Straus, M. A., Gelles, R. J. & Steinmetz, S. (1980). *Behind Closed Doors*. New York: Anchor.*

⁵Stacey & Shupe, 1983; Stark, E. & Flitcraft, A. (1988). Women and children at risk: A feminist perspective on child abuse. *International Journal of Health Services*, Vol. 18, No. 1, pp. 97-118; Stith, S., Williams, M., & Rosen, K. (1990). *Violence Hits Home*. New York: Springer.

¹Crowell, N. A. & Burgess, A. W. (1996). *Understanding Violence Against Women: Panel on Research on Violence Against Women, Committee on Law and Justice, Commission on Behavioral and Social Sciences and Education*. Washington, DC: National Research Council/National Academy of Sciences.

²Jaffe, P. G., Wolfe, D. A., & Wilson, S. K. (1990). *Children of Battered Women*. Newbury Park, CA: Sage.

Practice Tip:

- Domestic violence is not just a problem between the adults. It hurts the child. Advocate protection for all children from violent homes, whether they are victims or witnesses.

WITNESSING THE ABUSE

At least 75% of children whose mothers are battered witness the violence.⁶ In some cases, fathers deliberately arrange for the child to witness it.⁷ The effect on children's development is just as severe for those who witness abuse as for those who are abused. Witnessing the violence at home is even more harmful than witnessing a fight or shooting in a violent neighborhood. Researchers report that violence is "particularly damaging for young children when they are exposed to assaults between people to whom they are emotionally attached."⁸ Specifically, it has the most negative effect when the victim or perpetrator is the child's parent or caregiver.⁹

Practice Tip:

- Advocate services for parents to help them understand the risks and consequences to children who witness violence. These services should also teach parents nonviolent ways to resolve conflict and communicate.

(Continued on Page 6)

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⁶Dobash, R.E. & Dobash, R. (1979). *Violence Against Wives: A Case Against the Patriarchy*. New York: Free Press; Pagelow, M. D. (1982). Children in violent families: Direct and Indirect Victims. In S. Hill & B. J. Barnes (eds.), *Young Children and Their Families*. Lexington, MA: Lexington Books.*

⁷Wallerstein, J. S. & Kelly, J. B. (1980). *Surviving the Breakup: How Children and Parents Cope With Divorce*. New York: Basic Books.

⁸Groves, B., Zuckerman, B., Marans, S. & Cohen, D. (1993). Silent victims: Children who witness violence. *J.A.M.A.*; Vol. 269, pp. 262-264; Osofsky, J. D. (1995). Children who witness domestic violence: The invisible victims. *Social Policy Report (Society for Research in Child Development)*, Vol. 11, No. 3, p. 4.*

⁹Pynoos, R. S. & Eth, S. (1986). Witness to violence: The child interview. *Journal of the American Academy of Child and Adolescent Psychiatry*, Vol. 25, pp. 306-19.*

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Special thanks to Christy Clements, who has worked for several months preparing the site, and to Don Smith and USC Law Library Webmasters for their assistance. Also, we appreciate the current and former law student/research assistants who located and summarized cases: Lillie Hart, Laura Waring and Blakely Copeland.

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Special Education: Part II

This is a continuation of "Special Education: You Can Use The System To Get Services for Qualified Abused and Neglected Children" which appeared in the August issue of the Children's Law Report.

If the parents or surrogate parents disagree with the school district on any aspect--the assessment, the goals and objectives, the services offered and/or the placement--the parents can file a complaint requesting a due process hearing. The 1997 amendments require that this request contain certain specific information if the parents ultimately seek to recover attorney's fees. In the alternative, parents may file an administrative complaint with the State Department of Education; such complaints are an appropriate mechanism to address failure to provide services on the IEP, improperly certified teachers, etc.

The 1997 amendments require states to provide mediation as a voluntary option to parents and schools as the initial process to resolve disputes. It also allows states or local education authorities (LEAs) to establish a procedure to require parents who choose not to mediate to meet with a disinterested party who will encourage the use and explain the benefits of mediation. The next step is an impartial due process hearing before a hearing officer, followed by an appeal to the state education agency and finally suit in federal or state court. Generally, if the parents get to the due process step they will want an attorney; if they are successful the court can order the school district to pay the parents attorney's fees. The 1997 law reduces the attorney's fees available in specific instances. The school district also has the right to ask for due process if it disagrees with the decision of the IEP team.

Under prior law, students "stayed put" in their current placement, while the due process proceedings were under way except in extreme circumstances. The 1997 law gives school officials and hearing officers much broader powers to move special education children. It still requires that the child remain in his/her current placement unless a hearing officer makes an order based upon the information below or school officials find a particular behavioral problem. School officials are permitted to put a special education pupil in appropriate interim alternative educational settings for up to: (1) 10 days for any behavior for which non-special education students could be so disciplined; or (2) 45 days if the child carries a weapon to school or a school function or knowingly possesses, uses or sells illegal drugs or a controlled substance at school or at a school function. Either before or within 10 days after doing either of the above, the

LEA must hold an IEP to address that behavior.

A hearing officer can order a child into an appropriate interim alternative educational setting for up to 45 days if the hearing officer (1) finds substantial evidence that the current placement is substantially likely to result in injury to the child or others, (2) considers the appropriateness of the current placement, (3) considers whether the LEA made reasonable efforts to minimize the risk and (4) finds that the alternative placement enables the child to continue to participate in the general curriculum. Within 10 days of the LEA or hearing officer's order of alternative placement the IEP team must hold a meeting to review the relationship between the disability and the behavior. The IEP team can only find the behavior is not related to the disability if (1) they have reviewed all input and found the IEP, services and placement were appropriate; (2) the disability did not impair the child's ability to understand the impact and consequence of the behavior; and (3) the disability did not affect the child's ability to control the behavior.

Note that FAPE must continue to be available to all children with disabilities who have been suspended or expelled from school. The interim alternative setting must enable the child to continue to participate in the general curriculum and to continue to receive the services/modifications in the current IEP and must include services/modifications to address behavior. Homebound schooling should not be an option except for medical reasons. Many school districts in South Carolina have limited alternative placements; persons working with students suspended or expelled from school must carefully examine the nature of the alternative placement to ensure that it provides FAPE.

The 1997 law requires that services be provided to 18- to 21-year-old adults incarcerated in adult facilities only if they had IEPs immediately prior to incarceration. It does not specifically address the situation of juveniles held in detention facilities.

The 1997 law requires that LEAs must provide for participation in district programs for children placed in private schools by the parents. The school district must use a proportionate amount of federal funds for this purpose. The new law limits parental reimbursement for unilateral private school placement to situations where the district did not timely offer FAPE; reimbursement may be denied or limited unless parents timely provide the school with specific information of their intent to place the child in a private school or if the parents do not make the child available for assessment after the school made a reasonable request.

**State v. Burton, Opinion No. 2668,
Submitted May 6, 1997 - Filed June 2,
1997. AFFIRMED.**

Burton was convicted of criminal sexual conduct with a minor for the sexual abuse of his daughter. He raises three issues on appeal:

I. Did the trial court err in allowing a DSS worker to testify regarding statements made to her by the Victim as to the details of the abuse?

II. Did the trial court err in admitting the testimony of a witness (Grzelecki) whom Victim told that she had been abused?

III. Did the trial court err in allowing testimony of Victim's sister under State v. Lyle?

I. Testimony of DSS Investigator

At trial the investigator with DSS testified to the detail of the sexual abuse as relayed to her by the victim. Ordinarily, unless it fits under a hearsay exception, testimony of this type would have been limited to time and place of the incident.¹⁰ However, Burton did not object to the investigator's testimony at trial and thus the issue was not preserved for appeal.¹¹

II. Testimony of Grzelecki

At trial Grzelecki testified that the victim, who was crying at the time, had called him in May 1995 and told him she had been sexually abused. Burton argues that the testimony of the friend should not have been admitted because it was "hearsay, improper corroboration, and not relevant to the offense charged" and that the State did not lay a proper foundation for the testimony.

Burton objected at trial to Grzelecki's testimony on

the basis that it was "hearsay, corroboration or otherwise." However, Grzelecki "did not testify as to any details about the abuse, identity of the perpetrator, or time or place of the abuse" and the court held that "any alleged error from the testimony was harmless." As to whether the testimony was relevant or whether the State established the proper foundation for the testimony, the court ruled that since Burton did not raise these issues at trial, he is procedurally barred from raising them for the first time on appeal.

III. Prior Bad Acts

Burton argues that the trial court erred in allowing into evidence testimony by Victim's sister regarding sexual misconduct by Burton. Further, Burton contends it was error to allow the Victim to testify as to other incidents in which she was the victim of sexual abuse by Burton which occurred later in 1995 (the incidents the defendant was on trial for occurred in 1988 and 1989).

A. Victim's Sister's Testimony

At trial, an *in camera* hearing was held to determine the admissibility of Victim's sister's testimony. After the lunch break, Victim's sister testified and defense counsel did not object. The court held that since Burton did not renew his objection when the evidence was presented at trial, this issue is procedurally barred.

B. Victim's Testimony

Burton failed to object to Victim's testimony about the sexual abuse in 1995 and is thus again barred from raising this issue on appeal.

Case Decisions From Around The Nation

Child is not a Viable Fetus for Purposes of Child Protection Act

The petitioner in State of Wisconsin ex rel. Angela M.W. v. Kruzicki, et. al., 561 N.W. 2d 729 (Wis. 1997), requested a writ of habeas corpus that would release her from a child protective services custody order. The Court of Appeals had previously denied the mother's writ and granted the lower court's order detaining her and her viable fetus. The Supreme Court of Wisconsin reversed the Court of Appeals' decision. The court ruled that even though the mother had given birth the issue of whether a child as defined in the children's code is a viable fetus can be determined by the court. The Supreme Court ruled that a "child" as defined in the children's code does not include a viable fetus.

¹⁰SCRE 801(d)(1)(D). See also, Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994)

¹¹A contemporaneous objection is required at trial to preserve an issue for appellate review. State v. Johnson, ___ S.C. ___, 476 S.E.2d 681 (1996). The issue must be raised to and ruled on by the trial judge. State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991). Failure to object when the evidence is offered constitutes a waiver of the right to object. State v. Black, 319 S.C. 515, 462 S.E.2d 311 (Ct.App. 1995). An issue which is not properly preserved cannot be raised for the first time on appeal. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994). Thus, Burton is procedurally barred from raising this issue for the first time on appeal."

The pregnant petitioner tested positive for cocaine usage. Her physician contacted the social services agency for the state of Wisconsin. The agency filed a "Motion to Take an Unborn Child Into Custody". The petition included a request to take the unborn child from his or her present custody and place the unborn child in protective custody. The petitioner voluntarily enrolled in a drug treatment facility. The agency amended its petition to request that the petitioner remain at an inpatient facility.

The petitioner argued that the child protective services statute does not have jurisdiction over her or her viable fetus. The petitioner also argued that the statute as applied to her violates her equal protection and due process rights.

The Supreme Court of Wisconsin held that the sole issue before the court was the interpretation of the statute. Does the definition of a "child" under the Children's Code include a viable fetus? The Wisconsin Supreme Court reviewed the legislative intent and history to answer this question. The court held that in reviewing the interpretation of a statute the court is obligated to avoid a construction that would have an absurd result. Here, the trial court held that the statute required that "the child be immediately removed from his or her present custody." The agency cannot remove a viable fetus from her or her present custody. The court noted that the Wisconsin legislature had many opportunities to define a child as a fetus, but declined to do so. The court held that the legislature should address the issue of whether a pregnant woman can be detained for acts harming her fetus.

Sovereign Immunity Not a Defense to Child Protective Service Agency

The Georgia Advocacy Office, a nonprofit organization, filed a deprivation action on behalf of the minor child, A.V.B., [*In the Interest of A.V.B.*, 482 S.E. 2d 275 (Ga. 1997)]. The minor child was in the custody of the Dougherty County Department of Children and Family Services. The child was placed in a state psychiatric facility. The petitioner filed an action alleging that the child was abused, neglected and abandoned by the state agency. The agency claimed that sovereign immunity barred the action. The Georgia Supreme Court ruled sovereign immunity is not granted when the state's action is illegal and injunctive relief is requested. The petitioner did not request or seek monetary damages. The petitioner alleged that the minor child was deprived and, contrary to the medical and mental health evaluations, the child was placed in a state operated psychiatric facility. The court reaffirmed the Court of Appeals decision remanding this case to the trial level.

Foster Parent Entitled to Special Foster Care Benefits

The foster mother in the case of *In Re Application of Adania C. v. Hammons*, 653 N.Y. S. 2d 594 (A.D. 1 Dept. 1997), requested special foster care benefits for two foster care children. The city and state Department of Social Services denied the foster mother's request. The foster children had a variety of physical and emotional deficits. The children were placed in the foster mother's care in 1988. The city and state Department of Social Services denied special benefits from June 4, 1989, through February 10, 1994. A fair hearing regarding the level of foster care benefits was held in 1994. The court held that due to the chronic, developmental disorders of the children that the foster mother was entitled to receive special foster care benefits from June 4, 1989, through February 10, 1994.

Children: The Forgotten Victims of Domestic Violence (Continued from Page 2)

HOW CHILDREN REACT

Children who witness violence often react as if they have been abused themselves.¹² Infants and preschoolers may initially be unaware of the violence in their homes, and their ignorance of the situation can partially protect them from its effects.¹³

Once children become aware of the violence around them, its impact can be devastating. They show high levels of emotional distress, and in some cases regress in language and toileting behavior.¹⁴ Clinicians have described

¹²Fantuzzo, J., Depaola, L., Lambert, L., & Martino, T. (1991). Effects of interparental violence on the psychological adjustment and competencies of young children. *Journal of Consulting and Clinical Psychology*, Vol. 59, pp. 258-265; Kashani, J., Daniel, A. E., Danoy, A. C., & Holcomb, W. R. (1992). Family violence: Impact on Children. *Journal of the American Academy of Child and Adolescent Psychiatry*, Vol. 31, pp. 181-182.*

¹³Drell, M., Siegel, C. & Gaensbauer, T. (1993). Post traumatic stress disorders. In C. Zeanah (ed.), *Handbook of Infant Mental Health*. New York: Guilford Press; Groves, B., Zuckerman, B., Marans, S. & Cohen, D. (1993). Silent victims: Children who witness violence. *Journal of the American Medical Association*, Vol. 269, pp. 262-264.*

¹⁴Bell, C. (1995). Exposure to violence distresses children and may lead to their becoming violent. *Psychiatric News*, pp. 6-8, 15; 1993; Jaffe et al., 1990; Margolin, G. (1995, January). *The Effects of Domestic Violence on Children*. Paper presented at the Conference on Violence Against Children in the Family and Community, Los Angeles, CA.*

preschoolers of battered women as "intensely fearful [children who] scream and resist going to bed, and identify night time with the occurrence of violence."¹⁵ One researcher described "immobilized [and] shocked children who often run away and hide."¹⁶ These children suffer physical symptoms as well, including insomnia, sleep-walking, nightmares, and bedwetting, as well as headaches, stomachaches, diarrhea, ulcers and asthma.¹⁷

As their awareness grows, school-age children often personalize the violence, and are confused about why it occurs and how they can prevent or stop it. They may also feel guilty because they are unable to protect their mothers from the abuse. In some cases, the child may perceive the mother as helpless, may lose respect for her, or even become angry at her for "letting it happen."¹⁸

School-age and adolescent children in violent families are more aggressive and withdrawn or anxious than children in nonviolent families. In addition, witnessing violence affects school performance and development of appropriate social skills.¹⁹

Studies of adolescents in violent families, many of whom experienced violence for most of their lives, have found they were highly aggressive, had truancy and other school problems, and often sought revenge.²⁰ Many also withdrew emotionally from their families, and turned to their peers or gangs as a "substitute family and incorporat[ed]

violence as a method of dealing with disputes or frustration."²¹

Practice Tips:

- Children from violent homes need positive role models and supportive environments that will help them develop social skills and address feelings about the violence in a constructive manner.
- Find out what community supports are available in your community. Many domestic violence shelter programs have children's peer support groups. In most cases, because shelters prefer to keep their locations confidential for safety reasons, children must be residents of the shelter to participate.

If the child does not live in a domestic violence shelter, call the National Domestic Violence Hotline [(800) 799-SAFE or (800) 787-3224 for TDD service] or a local crisis hotline for referrals to a peer support group for children in the community.

Big Brothers/Big Sisters, youth recreation centers, and domestic violence support groups are examples of community programs that can offer positive mentoring relationships for children and youth. Relatives, school teachers, athletic coaches, clergy, and others who know the child may be available to serve as mentors.

Effects of Experiencing Violence First Hand and Witnessing Violence

A 1996 nonclinical study²² looked at over 900 ethnically-diverse adolescent boys and girls to determine the effects of being a victim of child abuse, and witnessing abuse. On the whole, children reported experiencing high levels of violence. While boys experienced higher levels of parent-child violence than girls, the majority of both groups were hit with an object, and 15% were beaten by a parent. Boys and girls also witnessed severe acts of violence between their parents; one-third saw one parent hit the other with an object; 11% saw one parent threaten the other with a gun.

Like previous studies, researchers also found a significant relationship between parent-child violence and witnessing parental violence. When examined together,

¹⁵Pagelow, M.D. (1990). Effects of domestic violence on children and their consequences for custody and visitation agreements. *Mediation Quarterly*, Vol. 7, No. 4, P. 349.*

¹⁶Davidson, T. (1978). *Conjugal Crime: Understanding and Changing the Wife-beating Pattern*. New York: Hawthorne Books, p. 119.

¹⁷Hilberman & Munson, 1977-78.

¹⁸Davidson, 1978.

¹⁹Bell, C. & Jenkins, E. J. (1991). Traumatic stress and children. *Journal of Health Care for the Poor and Underserved*, Vol. 2, pp. 175-185; Christopoulos, C., Cohn, D. A., Shaw, D. S. Joyce, S., Sullivan-Hanson, J., Kraft, S. P. & Emery, R. E. (1987). Children of abused women: Adjustment at time of shelter residence. *Journal of Marriage and the Family*, Vol. 49, pp. 611-619.*

²⁰Bell and Jenkins, 1991; Parsons, E. R. (1994). Inner city children of trauma: Urban violence traumatic stress syndrome (U-VTS) and therapists' responses. In J. Wilson & J. Lindy (eds.), *Countertransference in the Treatment of Post-traumatic Stress Disorder*. New York: Guilford Press, pp. 151-178.*

²¹Osofsky, 1995, p.4*

²²O'Keefe, M. (1996). The differential aspects of family violence on adolescent adjustment. *Child and Adolescent Social Work Journal*, Vol. 13, No. 1, pp. 55-68.

however, researchers found that witnessing violence had little effect when there was a high level of parent-child violence. It appeared the effects of the parent-to-child violence were so devastating that the additional trauma of witnessing violence between one's parents made no difference.

Boys and Girls React Differently

Experiencing parent-child violence and witnessing parental violence predicted behavior problems. The greater the violence experienced and/or witnessed, the greater the behavior problems. Interestingly, the type of behavior problems and intensity of the problems differed among boys and girls. In most cases, boys externalized behavior problems (e.g., acting out, aggression), while girls internalized behavior (e.g., depression, anxiety). On the whole, the intensity of problems experienced by girls was greater than those problems experienced by boys.

These findings built on previous research, which found that while boys tend to act out their problems by becoming increasingly aggressive, girls withdraw and internalize their problems.²³ The internalizing problems they reported included guilt, anxiety, depression and suicidal thoughts. High internalizing scores were also found among children (boys and girls) with lower socio-economic status, and those with Asian backgrounds.

Practice Tip:

- Children may express their feelings about the violence differently. Internalization of feelings, especially among girls, may make it difficult to know the child's wishes regarding custody and visitation. Counseling may help the child come to terms with his or her feelings and provide an opportunity to verbalize any wishes. Be sure the court orders counseling costs to be paid by the abusive parent or through the abusive parent's insurance plan. Often, in domestic violence cases, the abusive parent controls the family's assets completely, and the victimized parent is unable to pay for counseling costs out of pocket.

RESPONSE OF THE ABUSED PARENT

As a victim of abuse, the child's mother may be preoccupied with her own safety and fears, or may withdraw emotionally and physically from her children, giving full-time

attention to the batterer.²⁴ In most cases children are abused by the batterer,²⁵ although there are documented cases where mothers have become physically or emotionally abusive to their children. "[S]ome battered women are so fearful of their partner's response to the children that they overdiscipline them in an effort to control their behavior and protect them from what they perceive as even greater abuse."²⁶

In some cases, the mother may have difficulty sympathizing with her child as a potential victim, or even to protect him from abuse.²⁷ However, "[i]t is . . . important to recognize that battered women are not a homogenous group. They range from women of great strength and coping capacity to women who experience a wide spectrum of mental health difficulties."²⁸ Some practitioners report that "the abuse of the children is often what precipitates a request for shelter or an order of protection."²⁹

Practice Tips:

- The child's safety is paramount. Work to guarantee that safety while maintaining the relationship between the victim parent and child. Before rushing to the decision that the abused parent failed to protect the child, carefully examine the family history of violence to determine if the abuser's actions prevented the mother from seeking help and providing protection.
- Some abusers will use violence or emotional abuse to render the abused parent psychologically or physically helpless. In other cases, the abuser may threaten even greater violence if the victim parent tries to seek help. In these cases, be sure the victim parent is safe (e.g., help her enter a shelter program or obtain a protection order for her and her child) when seeking help or protective services for the child.

²⁴Stacey & Shupe, 1983.

²⁵Stacey & Shupe, 1983; Stark & Flitcraft, 1988.

²⁶McKay, M. M. (1994). The link between domestic violence and child abuse: Assessment and treatment considerations. *Child Welfare*, Vol. 73, No. 1, p. 30.

²⁷Augustyn, et al. (1995). Children who witness violence. *Contemporary Pediatrics*, 12, 35-37.*

²⁸McKay, 1994, p. 30.

²⁹*Ibid.*, p. 31.

²³Jaffe, P., Wolfe, D. A., Wilson, S. K. & Zak, L. (1986a). Similarities in behavioral and social maladjustment among child victims and witnesses to family violence. *American Journal of Orthopsychiatry*, Vol., 56, No. 1, pp. 142-146.*

- Seek services to address the mother's mental health needs. If the mother has physically or emotionally abused the child, temporary removal of the child, conditioned on the mother's completion of mental health treatment and parenting classes, may be appropriate.
- Be sure the caseworker is fully apprised of the history of domestic violence.

LONG TERM IMPACT OF WITNESSING FAMILY VIOLENCE

The shock, fear and guilt experienced by children who witness family violence stays with them as they age.³⁰ Several studies have documented children showing symptoms of post traumatic stress disorder,³¹ including sleeplessness, agitation and "repeated re-experiencing of the traumatic event, avoidance, and numbing of responsiveness."³² This is especially true for children who have witnessed extreme levels of violence, including the murder of a parent.³³

Witnessing violence may also cause children to learn that violence is an acceptable way, even the only way, to resolve conflicts. This effect is often referred to as the "intergenerational transmission" of domestic violence. For more information on the intergenerational transmission of violence, see *Troubled Family Legacies and Resilience*, 16(2) ABA Child Law Practice 24-29 (March 1997).

Practice Tip:

- Children who learn violence is an acceptable way to resolve conflicts need opportunities to change this belief. Counseling by a therapist, domestic violence victim support groups, and relationships with

supportive mentors can help the child adopt alternative, nonviolent ways to resolve conflicts. If you represent a child exposed to or victimized by domestic violence, make sure intervention efforts are in place to prevent the child from using violence to resolve conflicts.

INTERVENTION SERVICES LACKING

Despite the increased attention to domestic violence in recent years, research surprisingly indicates that, even in the most extreme cases, intervention is rarely provided. Referrals are usually made only after behavior problems begin. One study of 28 children who witnessed the killing of their mothers by their fathers found that few children received immediate treatment. Delays in treatment ranged from two weeks to 11 years.³⁴ Another study showed delays from one month to several years. Children who waited over a year for referral showed the most serious problems.³⁵

Practice Tip:

- Delayed intervention in these cases is unacceptable. No child who has witnessed violence against a parent should have to wait for intervention services. Lawyers and judges handling domestic violence cases involving children must make immediate intervention for the child a priority. If the child is still living in an environment in which domestic violence is likely to recur, help both the child and the victim parent develop a safety plan. Find out what services are available in or near your community so you are prepared to advocate for them promptly.

One factor contributing to the lack of services may be that, like many battered women, children who witness family violence become very skilled at hiding its effects, appearing fine on the surface. One study comparing children in violent families to those in nonviolent families reported that "children may deny the presence of [a] negative effect, due to desensitization to violence, denial of it, or to putting up a good front."³⁶

³⁰Hershorn, M. & Rosenbaum, A. (1985). Children of marital violence: A closer look at the unintended victims. *American Journal of Orthopsychiatry*, Vol. 55, No. 2, pp. 260-266; Levine, M. B. (1975). Inter-parental violence and its effects on the children: A study of fifty families in general practice. *Medicine, Science and the Law*, Vol. 15, pp. 172-176.*

³¹Drell, et al., 1993; Osofsky, J. D., Cohen, G. & Drell, M. (1995). The effects of trauma on young children: A case of 2-year old twins. *International Journal of Psychoanalysis*, Vol. 76, pp. 595-607; Zeanah, C. H. (1994). The assessment and treatment of infants and toddlers exposed to violence. In J. D. Osofsky & E. Fenichel (eds.), *Caring for Infants and Toddlers in Violent Environments: Hurt, Healing and Hope*. Arlington, VA: Zero to Three/National Center for Clinical Infant Programs, p. 29-37.*

³²Osofsky, 1995, p. 4.

³³Eth, S. & Pynoos, R. (1994). Children who witness the homicide of a parent. *Psychiatry*, 57, 287-306.

³⁴Black, D. & Kaplan, T. (1988). Father kills mother: Issues and problems encountered by a child psychiatric team. *British Journal of Psychiatry*, Vol. 153, pp. 624-630.

³⁵Eth & Pynoos, 1994.

³⁶Hughes, H. M., Cole, F. C., & Ito, E. S. (1988, August). *Maternal Functioning and Family Violence as Predictors of Child Adjustment*. Paper presented at the 96th annual convention of the American Psychological Association in Atlanta, GA, p. 10.

A common mistake is failing to recognize these children are victims who need the same services as those who are physically or sexually abused. "Ironically, the focus shifts from the rights of the children to nonviolent lives to a focus on parental rights when abused mothers attempt to separate from their abusers or terminate their violent marriages in hopes of building violence-free lives for themselves and their children."³⁷

Practice Tip:

- No child who has witnessed or experienced family violence will be unaffected. Permitting the child to deny the violence will only result in negative long-term consequences. Seek services to help the child express feelings about the violence. At the very least, the child should have someplace or someone he or she can turn to for support.

LIMITATIONS OF THE RESEARCH

Research on children who witness domestic violence is a relatively new area, and lacks the wealth of research findings available in other fields. Few empirical studies exist and most researchers rely on a clinical sample that may not represent the population at large. In many cases, researchers rely on the mother's report of the child's adjustment, rather than information from the child. If the mother has been a victim of violence, her perception may be skewed. Even those studies that look at the child directly (through interview and/or observation) may not account for other factors that may influence the outcome.

Since most of the children studied lived in battered women's shelters, it may have been difficult to determine the extent their behavior was affected by the anxiety of living away from home in a strange place. In fact, one study actually showed children had more behavior problems while they were in the shelter than they did months after returning home.³⁸ In addition, some studies did not track whether the child was a witness or a victim of abuse, or both.

WHAT LAWYERS SHOULD DO

- Advocate for separate legal representation for both parties and avoid interviewing the parents together. When there is a possibility of domestic violence, recognize the interests of the mother and

father may not be the same. A 1990 study³⁹ found that even when therapists ask "the specific questions routinely targeted to reveal abuse at intake, the revelation is usually: (a) made in the absence of the male spouse, or (b) made in a phone call when the female partner wishes to convey a 'secret' to the therapist that she thinks relevant but doesn't want to talk about."

- Consider whether removing the child is necessary. Removing the children often increases the battered woman's isolation and vulnerability.⁴⁰ "In many cases, removing the batterer from the home, not the children, may be the more appropriate intervention."⁴¹ What safeguards are needed to ensure the mother does not allow the batterer to return home?
- Evaluate the mother's parenting abilities. Some researchers point out "it is impossible to assess a mother's true capacity to care for her children while she is being battered or experiencing posttraumatic stress from the abuse."⁴² If the children are not in imminent danger from the mother, child protective services may instead offer her and her children shelter services first, until there is a clearer understanding of a mother's capacities."⁴³
- Delay recommending marital or family counseling which involves the batterer. Several researchers⁴⁴ discourage using traditional family therapy in domestic violence cases because it implies that both partners are equally responsible for the violence. While more recent therapy approaches account for gender and power differences and

³⁹Stark & Flitcraft, 1988.

⁴⁰DePanfilis, D. & Brooks, G. (1989). *Child Maltreatment and Woman Abuse*. Washington, DC: National Woman Abuse Prevention Project.

⁴¹Bograd, M. (1990). Why we need gender to understand human violence. *Journal of Interpersonal Violence*, Vol. 5, No. 1, pp. 132-135.

⁴²McKay, 1994, pp. 35-36.

⁴³Bograd, (1990); Against the grain: Decentering family therapy. *Journal of Marital and Family Therapy*, Vol. 14, pp. 225-236.*

⁴⁴Walters, M., Carter, B., Papp, P., & Silverstein, O. (1988). *The invisible Web: Gender Patterns in Family Relationships*. New York: Guilford Press.*

³⁷Pagelow, 1990, p. 353.

³⁸Emery, R. E., Draft, S. P., Joyce, S., & Shaw, D. (1986). *Children of Abused Women: Adjustment at 4 Months Following Shelter Residence*. Paper presented at the 94th annual convention of the American Psychological Association in Washington, D.C.

historical and societal factors;⁴⁵ it is better to focus first on individual and group counseling (e.g., "victims" and "batterer's" groups) rather than joint marital counseling.

- **Encourage links to community resources for battered women and children.** Shelters, housing programs, public assistance, training and child care programs are just some of the resources that can help battered women build independent lives for themselves and their children.
- **Seek restricted visits at a neutral site for the batterer.** Get a guarantee from the child welfare agency that visits between the child and parents will not occur together. Batterers may use the visits to try and intimidate and harass the victim parent and use the child as a pawn. In addition, visits between the batterer and child should be supervised and held in a neutral site, such as the agency offices. In cases involving severe domestic violence that cause the child to fear the batterer, consider whether visits should be denied.
- **Advocate that the court impose sanctions on the batterer.** Mandated court appearances, restricted visits at a neutral site, and counseling should be a minimum. Explore the possibility of pursuing assault charges and restraining orders. Domestic violence experts caution that it is often at this point that a batterer may retaliate with extreme violence in a last-ditch effort to control the victim parent. When there is a fear of possible retaliation and/or extreme violence, domestic violence experts advise looking at the following factors which can help predict escalating violence:
 - threats or attempts at suicidal or homicidal ideation;
 - escalation in frequency and severity of violent episodes;
 - threats to use weapons owned by perpetrator (or recent purchase of weapons);
 - prior criminal behavior or prior violations of protection orders;
 - mental health issues;
 - substance abuse;

- preoccupied or obsessed with victim; stalking; saying "If I can't have her, nobody can."

Safety planning and court order enforcement are critical to enhancing the safety of both the victim parent and child.

- **Be prepared to seek legal remedies for the battered spouse.** Victims of domestic violence have several legal options which can increase their independence and help them break away from the abuser. These include divorce, child custody and child support actions. If you are unable to offer these services, provide a referral to an individual or organization that can.
- **Conduct safety planning with any client affected by domestic violence.** Creating a safe environment is the best way to reduce the adverse impact of domestic violence on children. The safer the adult victim, the safer the child.

CONCLUSION

Children living in violent homes face a number of risks. The likelihood of abuse is high in families where there is domestic violence. Witnessing the violence between parents can be extremely traumatic and have lasting effects on children. In all cases of domestic violence, children's safety must be ensured. Lawyers must focus efforts on protecting children and the nonabusive parent from violence and creating circumstances so that effective parenting can occur. Lawyers may find that, in ensuring the child's safety and best interests, they may be called upon to seek legal and community services for the abused parent.

Correction to the July 1997 Newsletter

The July issue of this newsletter contained a summary of Act 141, Victim and Witnesses Services. The summary stated that §16-3-1210 was amended so as to delete the provisions allowing licensed health care or medical facilities to receive awards from the fund. The article should have also noted that reimbursements to eligible health care facilities for medicolegal examinations continue to be allowed under the law, but are covered in a new section, §16-3-1350. We regret any confusion this may have caused.

⁴⁵ ABA Commission on Domestic Violence (Spring 1997). Judicial Checklist. *ABA Judges' Journal*, pp. 22ff.

Upcoming Training

Child Abuse: At What Cost?

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September 25 - 26, 1997;
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Juvenile Officers Annual Conference

The South Carolina Juvenile Officers Association will hold its Annual Conference on October 16 - 19, 1997 at the Beach Cove Resort in North Myrtle Beach, S.C. This conference is for any juvenile officer, school cop, S.R.O., D.A.R.E. officer, D.J.J. worker or any other person who works with young people in the law enforcement area. We offer at least 12 hours of in-service training and a chance to meet and share information with other juvenile professionals from around the state. Conference registration is \$20.00 and can be paid at the door. Beach Cove rooms are available on a first come, first served basis and other hotels in the area are available. For more information call: Sgt. Chris Ross at (803) 740-2861 or Sgt. Richard Shoe at (803) 918-1382. You can also contact the association by writing: South Carolina Juvenile Officers Association, P.O. Box 211425, Columbia, SC 29221-6425.

Ritual Trauma, Child Abuse and Mind Control Conference

October 1-3, 1997;

Atlanta Market Center, Atlanta, Georgia;

This conference is designed to promote an awareness and understanding of the complexities of ritual trauma and mind control and to assist professionals in the legal system with the difficult job of properly identifying, assessing, treating, and prosecuting such cases. It is also intended to provide a forum for increased dialogue between professionals and survivors. This conference is co-sponsored and organized by E.C.L.I.P.S.E., a non-profit organization dedicated to protecting abused children in the legal system. The Ritual Trauma, Child Abuse and Mind Control Conference is being held in conjunction with CT Expo and Seminar. CT Expo is an exhibition and seminar for the law enforcement community focusing on terrorism. The conference is approved for general social work continuing education credits. For more information contact: Marketing International Corp. 703/527-8000.

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